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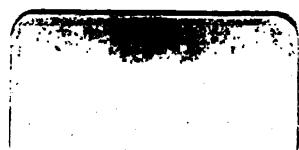
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Hotchkiss

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THE INNS AND COURTS OF CHANCERY



By
CLARENCE ROLAND HOTCHKISS, L. L. B.

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The Inns and Courts of Chancery



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The Inns of Court and of Chancery

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*A BRIEF SUMMARY OF THE CUSTOMS,
TRADITIONS and REQUIREMENTS
OF THE LEGAL SYSTEM
OF ENGLAND*



By
CLARENCE ROLAND HOTCHKISS, L. L. B.
of
The Oregon Bar

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The Inns of Court





HON. CALVIN U. GANTENBEIN

To

A TRUE counselor and friend, one who was a comrade in time of war, my Regimental Commander in time of peace, and the Prexy of my Law School days, the Honorable Calvin U. Gantenbein, former dean of the Law Department of the University of Oregon, veteran of the Spanish-American and World Wars, Colonel of the Third Oregon Infantry and for many years Judge of the Circuit Court of the State of Oregon, this work is dedicated, in grateful appreciation of his many kindly acts and with the sincere desire to honor the memory of an excellent soldier, a distinguished lawyer and loyal citizen.



THE INNS OF COURT

WHILE serving with the American forces, I had the honor of an invitation to the banquet given by the Benchers of the Middle Temple to the members of the American bar in the American armies in Europe. It was my first contact with any of the legal institutions of England, and the dignified customs and beautiful home of this ancient Inn of Court appealed to my imagination, and I determined to find out what I could about it, and write it for my own bar association. The many months since that banquet have been filled with work.

The history of most of England's great institutions is little known to the average Englishman, and this holds true for the institutions of the law, but by learning at bit at one time and a little more at another, asking many questions and reading what I could find on the subject, I finally gained a general, though I think fairly accurate knowledge of the place of the four Inns of Court, of which the Middle Temple is one, in the legal system of England. I pass what I have found on to my brothers-in-law, and to the laymen who are interested in our legal system.

There is one fundamental difference between British and American institutions, a difference that will become perhaps somewhat less pronounced as American institutions are altered to fit changing needs with the passage of time. But it is one that makes a deep impression upon the American who tries to understand British institutions as they exist today. They can only be understood properly by tracing them back to their source, or as nearly to their source as is possible, and when they are followed back, and back, it is generally found that they have grown from something which we would never have suspected as having any connection with the thing in question. The changes which a thousand years have made in a rapidly developing people on the way from barbarism to the highest state of civilization have caused very peculiar interrelations of what we would at first glance call totally unrelated institutions, and probably the real beginnings are unrecorded and unknown, and can only be learned by inference. American institutions of today have developed from what they were a century or two ago when they were brought over from the continent or were created as our Constitution was, at one time and one place; the changes have been comparatively slight, for compared with an old country like England, the changes in conditions in America which work changes in institutions have been almost negligible.

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When I first looked for information about the Middle Temple, I hoped to find someone who could tell me quickly and clearly that its organization, its membership, and its place in the legal system, were thus and so. I thought I would surely be able to find a book which would tell me all about it. I soon found out that if I wanted to understand the Middle Temple well enough to be able to write about it, I would have to dig up all this information for myself. I have since learned that the man who knows the least about England is the Englishman, and that if an American wants to know about anything—law or interesting places, or buildings or almost anything else—he must be prepared to find it out for himself.

The Middle Temple is one of the four Inns of Court which have the exclusive privilege of admitting barristers to practice in England. To understand the conditions, we must, as I have said before, begin at the beginning of a definite court system in England, or as nearly to that time as possible. The year 1292, the twentieth in the reign of Edward I, is a memorable one in the history of English law. Up to that time, there has been no recognized legal advisers. The court followed the king, and the litigants either handled their own cases or secured the assistance of anyone sufficiently versed in the common law of the realm. In 1292 the King ordained that the Chief Justice of the Court of Common Pleas and his fellow Justice, “Should select from every county, *‘de Attornatis et Apprenticiis’*” to follow his court and transact the affairs thereof, the best and most apt for their legal learning and skill, to do service to the King’s Court and the people, and that those so chosen and no others should follow his Court and transact affairs therein. Before that time, there seems to have been certain sergeants-at-law, who frequently acted as itinerant justices of the Court of Common Pleas, and while the court sat “in banco”, they had exclusive audience. From among them, until well in the nineteenth century, the Justices were chosen. After this ordinance, none but the *apprenticii de banco* practiced in the assizes or at *nisis prius*.

When the Court of Common Pleas ceased to follow the King, and was made permanent at Westminster, the Inns of Court and of Chancery came into being. The Inns of Chancery were the older; they no longer exist. Most of them came into existence in the fifteenth century. It seems that when the court became established at Westminster, in a part of the city

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just outside the city of London proper, gentlemen with good private incomes, who were interested in the law as a profession, took up their residence in the Inns in which the Apprenticii de Banco, or benchers, had their residence. Around these benchers grew up very informal schools of law, which resembled in many ways the fraternities around our great universities. These men grouped together in an Inn for years at a time developed an organization, finally bought the Inns they lived in, and as time went on developed ranks or classes which were given privileges in the courts. Students became mootman, which were those that argued reader's cases in the houses of Chancery. Out of these after eight years, were chosen utter barristers, so called because they practiced outside the bar of the court. Out of these, after 12 years, were chosen benchers or ancients, who seem to have been the direct successors of the Apprenticii de Banco, and practiced inside the bar of the Court side by side with the sergeants, except when the court sat "in banco".

About 1322-26, some of the benchers of one of the oldest of the Inns of Chancery left their Inn and bought property in what was known as the Middle Temple. This property had originally belonged to the Order of Knights Templars. When the order fell into disfavor with the Pope and the King of England and was destroyed, the Temple passed to the Order of St. John in three general districts called Inner, Middle and Outer Temple, and 40 years later, another group of benchers from another Inn bought Inner Temple. Middle and Inner Temple both became Inns, but very much superior to the other Inns, for their members were more learned men who held much higher positions in the courts. Not long after two other Inns of Court, as these benchers' organizations were called to distinguish them from the earlier Inns of Chancery, appeared—Gray's Inn and Lincoln's Inn.

For several centuries we do not know too much about the organization and privileges of these four Inns of Court. We do not know that the Inns of Chancery became subordinate to them, each Inn of Court becoming responsible for several Inns of Chancery. As time went on, it seems that the judges delegated to these associations of benchers certain of their own duties, particularly that of selecting the men who should be permitted to practice in the courts, and today the Inns of Court are in complete charge of the training, selection, and

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discipline of all the barristers in England, and not only license them, but deprive them of their licenses if they do not live up to their positions and privileges, or abuse them.

And now, before I describe how the Inns are governed, I must tell you something of the different classes of "lawyers". We have mentioned the sergeants, benchers and barristers. These have always been and still remain the men who plead before the Court, or rather, they have been reduced to benchers and barristers, both with the same privileges except in their own Inns, and the sergeants have been done away with, the judges now being chosen from among the barristers in general.

Originally there were several different classes of law servants, attorneys, proctors, solicitors and others. These men did, and still do, all the clerical, technical and research work in the courts and between litigants—they do everything but plead. They make all arrangements for the trials, or for the settlements, and summarize the cases in briefs before they turn the cases over to the barristers to take before the judges. The barristers themselves are not paid in the ordinary way. When the solicitor (and the term now includes attorneys and proctors) hand the briefs of a case to their barristers, they mark on the brief the amount of the honorarium, which is not a payment but a gift, to which the barrister has no legal claim, and which he cannot collect through the courts should the litigant refuse to pay or the solicitor not make it good.

As the Inns of Court developed, they began to take over the work of the Inns of Chancery. After rigid examinations or after completion of work at the English Universities, they accepted men as students in the Inns of Court. From among these students they selected men to be barristers and licensed them. When the privileges of the sergeants were thrown open to all barristers, that is, the privileges of rising to the bench there was only one class of pleader left, the barrister.

The Government of the Inns of Court is carried on by benchers, who are much different now from what they were in 1292. They are elected from among the barristers of the Inn, and hold their office for life. The four Inns have in the last century joined together in a loose organization represented by a council, to which each Inn sends five benchers. These Inns guard most jealously the privileges of the bar, and they are great. A barrister, may, for instance, make any statement he pleases about a man's character, and there is no re-

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course for libel. The only protection which the litigant has against libel is the honor of the barrister and the watchfulness of his Inn. It is for this reason that admission to the Inns of Court as a student is so difficult to obtain. It is very seldom that an Inn is called upon to throw out a member. There has been criticism of the Inns, and there are those who are jealous of their powers, but it seems that the interests of the law are safe in their hands.

The solicitors are also licensed now, but their licenses come through the courts, which have the right to revoke their privileges. While they belong to a very honorable profession; the solicitors do not rank with the barristers.

Any description I could give in a limited space of the Inns themselves, the buildings and halls, would have little interest to the average reader. The buildings are very old; most of them were built by men whose names are long forgotten. Their monuments and chambers are the museums of the English law. It is through these Inns that practically all the great men of England have risen, and for that reason they are fascinating to a visitor who knows a bit about England's past. All London, all England, is fascinating for the innumerable things and places that recall the men and events that are by-words with us today. But really to appreciate them, you must be on the spot, must see this cramped little room, and know that it was here that Dr. Johnson worked on his dictionary and argued with Goldsmith, while Blackstone on the floor beneath was trying to work on his Commentaries, and probably cursed the din that disturbed his thoughts, and so on, *ad infinitum*.



DINNER AT THE INNER TEMPLE

JULY 19th, 1918

Treasurer:
R. A. McCall, Esq., K. C.

DINNER
to the members of the
UNITED STATES BAR IN ENGLAND
serving in the
AMERICAN MILITARY AND NAVAL
FORCES
AMERICAN LAWYERS at the
MIDDLE TEMPLE

The treasurer and Masters of the Bench of the Middle Temple entertained on Friday evening, the 19th of July, several members of the United States Bar, now in England, serving in the American Military and Naval Forces.

The Benchers present were:

The Master Treasurer, Mr. R. A. McCall.
Master Rt. Honorable Lord Finlay.
Master Rt. Honorable Viscount Mersey.
Master Digby.
Master English Harrison.
Master Muir-Mackenzie.
Master C. C. Scott.
Master Blake Odgers.
Master Sir Robert Wallace.
Master Brogden.
Master Judge Ruegg.
Master MacMorran.
Master Gill.
Master Lindsay.
Master Aspinall.
Master Clay.
Master Hamilton.
Master Rt. Honorable Sir S. T. Evans.
Master Sir R. D. Muir.
Master Lord Dunedin.
Master Sir D. Stewart Smith.
Master Kemp.
Master Honorable Mr. Justice Clavell Salter.
Master De Colyar.
Master Forbes Lankester.

DINNER AT THE INNER TEMPLE

Master Honorable Mr. Justice McCardie.
Master De Gruyther.

The guests present were:

R. Newton Crane.
D. Campbell Lee.
John U. Loomis.
Wm. S. Howell.
James K. Lynch.
Frederic Carroll.
J. Arthus Barratt.
Captain Frank M. White.
1st Lieutenant Claude T. Smith.
1st Lieutenant H. W. Kelly.
1st Lieutenant Gilvie Hubbard.
W. Coburn Cook.
Verner E. Gilpatrick.
Major John Baker White.
1st Lieutenant F. F. Russell.
2nd Lieutenant Dean E. Ryman.
1st Lieutenant John S. Elliott.
Keith Merrill.
Sergeant John D. Hoyt.
Howard S. Harrington.
Captain John W. Pattison.
Corporal S. W. Maytubby, Jr.
Harry T. Pressly.
J. T. Lenaham, Jr.
Robert Collins.
Robert E. Quinn.
R. Emmett Taylor.
Francis M. Marriott, Jr.
Boylston Beal.
Major R. Stuart Smith.
Lieutenant H. L. Bridges.
James Van Allen Shields.
Raymond B. Stevens.
Captain Edgar T. Hawley.
Captain Clarence R. Hotchkiss.
1st Lieutenant Jacob Feldman.
2nd Lieutenant John G. Flanigan.
2nd Lieutenant Frank S. Anderson.
J. Grant Forbes.
G. B. Stockton.
F. M. Whaley.
2nd Lieutenant Charles A. Hunt.
Major G. McCall, R. A. F.

SPEECH OF MASTER TREASURER, McCALL

During dinner, the Master Treasurer proposed the toast of "The King," and while all were upstanding "The President of the United States of America." After dinner the usual toasts of "Domus" and "Absent Members" were given.

The Master Treasurer, in proposing the toast of the evening, said:

"Master Junior, I rise to propose the toast of our Guests: Our Brethren in the law now serving with the American Forces.

"There is, as you know—though perhaps our guests do not—a rule of this House that there should be no speeches in Hall. That rule I have been taught is as rigid as the laws of the Medes and Persians, but still it has some exceptions. We celebrated—if I may use the word—one of these exceptions a short time ago when the Middle Temple had the honor of entertaining the Prime Minister of the United Kingdom. To-night I am creating another and more unique exception. It is unique for several reasons—reasons intimately associated with this old Elizabethan Hall. We have had the honour of entertaining here on various occasions American Lawyers; and notably during the International Congress; but it is obvious to all of us that the present occasion is an occasion which is, as I say, unique. We have had the honour of calling to this bench one of the most celebrated of the American Lawyers and Diplomats, the late Mr. J. H. Choate. I have lately received a striking portrait of that distinguished Benchers, through the kindness of his daughter, Miss Choate. Our American visitors to the Middle Temple Hall, who are not few, will soon see it added to the honourable list of distinguished Benchers of this Inn; and when they look at it, as I have looked at it, they will, I am sure, agree with me that in our time there has been no more distinguished and no more powerful advocate of the amity which should exist and does exist between the two great Anglo-Saxon peoples.

Before the year 1776 an illustrious member of this House, Edmund Burke, in speeches which Lord Morley has properly described as the most perfect manual in our literature or in any literature for one who approaches the study of public affairs, whether for knowledge or for practice, supported the just claims of our American Colonies. Those speeches show the wide illumination of great principles of human experience,

SPEECH OF MASTER TREASURER, McCALL

the strong and masculine feeling for the two great political ends of justice and freedom, the large and generous interpretation of expediency, the morality of vision and above all the noble temper. But those speeches, however much the members of the Middle Temple admire them, failed to convince the short-sighted statesmen at the time of George III, and the somewhat obstinate monarch they served. And when what Burke had predicted actually took place when the Declaration of American Independence was actually made, five, or it may be six, members of the Middle Temple took a prominent part in framing it, and convincing what were then our American Colonies of its political necessity. Five Middle Temple men actually signed the Declaration of Independence: Edward Rutledge, afterwards Governor of his state, and Thomas Lynch had been members of the Middle Temple for more than ten years; Thomas Heyward, who became a Judge and Arthus Middleton were entered some years before. Another distinguished Middle Templar, Thomas McKean, signed the Declaration as one of the Delaware Representatives; and he is said to have written the Constitution of the State in one night. He was successively appointed Chief Justice of the Supreme Court and Governor of his native State. But perhaps more distinguished than any of those was John Rutledge, the elder brother, who had been a member of the Middle Temple from 1754, who was called in 1760. His courage distinguished him as a soldier on the field of battle, his learning secured for him the great rewards of his profession. He became a Judge of the South Carolina Court, and afterwards Chief Justice. And probably the highest honour that was paid to his learning and to his statesmanship was when he was selected by Washington to be Chairman of the Committee who drafted the first Constitution of the United States. But the ties between our Guests and the Middle Temple do not end here. In spite of two wars and some intervals of misunderstanding, for very many years and up till the present time—certainly far beyond the Declaration of Independence—The English Common Law has been and is now administered in the United States of America as fully and completely—may I say as beneficially—as it is in England. And in our Courts, from the highest to the lowest, one may hear almost every day the expositions of distinguished American Judges of the Common Law that is common to the Empire and to the Commonwealth, quoted and approved by the most distinguished Lawyers of our time. In language and law there are the two strong bonds of friendship.

SPEECH OF MASTER TREASURER, McCALL

"But on the 5th of April in last year a greater crisis arose—a more momentous issue was to be decided. The worthy successor of Washington and Lincoln, President Wilson, was given the opportunity of taking sides in the great conflict between Right and Might, in vindicating the policy of peace against the lust of conquest and predatory war, of asserting the rule of law as against the dictates of violence. He has chosen, as those who knew his record as a Constitutional Lawyer felt he must choose, the policy which, to use his own words, is to make this world safe for democracy, and civilization has applauded his wise and beneficent choice. An American poet, addressing with pride his native land, has said:

" 'There's Freedom at thy gates and rest
For Earth's down-trodden and oppressed . . .
Power at thy bounds stops and calls back
Her baffled hounds.' "

And President Wilson and the Statesmen who surround him have entered upon the great policy of giving to the oppressed lands of Europe some of the blessings of Freedom enjoyed by the great Republic of the West.

"One of our most distinguished Benchers, Lord Reading, is, as you know the King's' Plenipotentiary at Washington. I received from him a short time ago a letter in which he refers to the large number of Lawyers in the United States who have given up lucrative positions and devoted themselves to war service. " 'I tell them,' he says, "of the work done by the Profession in England, and we exchange views always ending in satisfaction that Lawyers have responded so well to the call of civilization." ' I have no doubt that many of you are included in the class to which Lord Reading feelingly refers; and this old Hall, with its historical associations, is perhaps the most appropriate building in which to record that appreciation.

More than 300 years ago the then Master of the Temple, Richard Hooker, wrote his famous work, "Ecclesiastical Policy." In the Master's House, a few yards away from the place in which we are met, you may see the old desk on which were written the words I quote from Hooker's great work: " 'Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world, all things in Heaven and Earth do her homage, the very least

SPEECH OF MASTER TREASURER, McCALL

as feeling her care, the greatest as not exempt from her power.” These noble words are words which every Lawyer on either side of the Atlantic should cherish in his heart and memory—the least as not being beneath her care. This is the just and merciful Law against which the Hun vows to wage ceaseless war. Far beyond the stricken provinces of Flanders and France the influence of this law of justice and mercy will ere long prevail. The brutal power of militarist States will be curbed, and in a new world made safe for democracy, where the law conserves liberty and liberty inspires the law, a lasting and permanent peace will crown the triumph of law and justice for all.

“Master Junior, the toast is “‘Our Guests.’” Let us drink it with enthusiasm.”

Captain Frank M. White responded. As the Deputy Judge Advocate-General with the American Forces in England, he expressed his grateful thanks for the assistance rendered to him by the Judge Advocate General's Department in London.

Master Blake Odgers proposed the toast of “The Literary Associations of the Middle Temple.”

The Lord Chancellor responded.



AN ACKNOWLEDGMENT

FOR assistance in the preparation of this monograph, I am grateful to many people. To the Master Treasurer, Mr. R. A. McCall who kindly granted permission to examine the archives at the Inner Temple; to Master Blake Odgers who offered suggestions concerning bibliography and references, and my special thanks are due Captain George F. Parton of the British Liaison Service, a London Solicitor, who accompanied me during an expedition directed against the quaint little book shops of that City in search of source material, in the capacity of guide and counselor. I also appreciate the suggestions of a number of English Barristers who's names I fail to recall at this time.

Clarence R. Hotchkiss.

From the Press of
VETERAN PUBLISHING COMPANY
287 Taylor Street :-: Portland, Oregon

